

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED**

**JUL 20 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section of )  
the Cable Television Consumer )  
Protection and Competition Act )  
of 1992 )

MM Docket 92-266

Rate Regulation )

To: The Commission

**COALITION OF SMALL SYSTEM OPERATORS  
SUPPLEMENT TO PETITION FOR RECONSIDERATION**

The Coalition of Small System Operators 1/ by its attorneys, hereby supplements its Petition for Reconsideration filed June 21, 1993, in the captioned proceeding. Among other things, the Petition for Reconsideration suggested use of a "net income" analysis to judge, in the first instance, whether a small cable system's rates are per se reasonable. The analysis compares total revenues against total operating expenses, interest, and depreciation. If the "net income"

1/ The Coalition of Small System Operators consists of: ACI Management, Inc.; Balkin Cable; Buford Television, Inc.; Classic Cable; Community Communications Co.; Douglas Communications Corp. II; Fanch Communications, Inc.; Frederick Cablevision, Inc.; Galaxy Cablevision; Harmon Communications Corp.; Horizon Cablevision, Inc.; Leonard Communications, Inc.; MidAmerican Cablesystems, Limited Partnership; MidContinent Media, Inc.; Mission Cable Company, L.P.; MW1 Cablesystems, Inc.; Phoenix Cable, Inc.; Rigel Communications, Inc.; Schurz Communications, Inc.; Star Cable Associates; Triax Communications Co.; USA Cablesystems, Inc.; and Vantage Cable Associates.

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thus measured is negative -- or if it is positive but below some uncontroversial percentage of revenues -- then the system's rates would be considered reasonable.

This supplement consists of a Declaration from Anthony P. Kern at Arthur Andersen Economic Consultants. In the Declaration, Mr. Kern demonstrates that 15.5 percent represents a reasonable, conservative net income margin for small system operators. 2/ Therefore, consistent with the recommendations in the Coalition's Petition for Reconsideration, we recommend that small systems (with less than 1,000 subscribers) with a net income margin of less than 15.5 percent be deemed to have reasonable rates. These systems would be excused from the complicated benchmark analysis by virtue of their reasonable rates, thereby reducing administrative burdens on small systems consistent with Congress' directive.

The Coalition was unable to submit this figure of 15.5 percent for a reasonable net income margin when it filed its Petition for Reconsideration because the research and analysis to develop this figure and to insure its reasonableness was time-consuming. Furthermore, the press of other cable-related matters prevented earlier completion of the analysis.

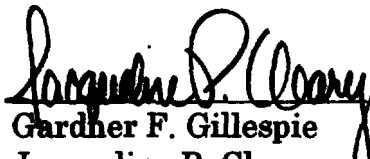
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2/ Indeed, the attached analysis is very conservative because, not only are depreciation, interest expenses and operating expenses subtracted from gross revenues to derive the 15.5 percent net income margin, but also amortization and taxes are subtracted.

**In view of the foregoing, the Coalition respectfully requests acceptance  
of this Supplement to Petition for Reconsideration.**

**Respectfully submitted,**

**COALITION OF SMALL  
SYSTEM OPERATORS**

By   
Gardner F. Gillespie  
Jacqueline P. Cleary

**HOGAN & HARTSON  
555 Thirteenth Street, N.W.  
Washington, D.C. 20006-1109**

**Its Attorneys**

**Dated: July 20, 1993**

## **DECLARATION**

I, Anthony P. Kern, hereby declare under the penalty of perjury that the following statements are true and correct:

I am a Senior Manager in the worldwide telecommunications practice of Arthur Andersen & Co. My primary area of expertise is cable television operations, valuation and economics. I have engaged in numerous studies of the financial operations of virtually every type of cable television system that exists in the United States. I have personally visited over 2,000 cable television systems during my career and directed consulting applications for nearly 6,000 cable television systems. I have given testimony as a cable television expert, under oath, in several US Federal Courts. My resume of professional experience is attached.

I have been asked to examine the possibility of establishing a net income margin for small cable television operators that would serve as a regulatory preemption trigger. That is to say, that cable television systems that are at the specified net income margin - or below would be exempt from rate regulation.

My methodology and conclusions are as follows:

1. I have determined that it is possible to establish a net income margin "trigger" for smaller cable television systems.

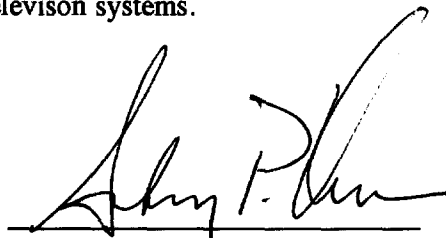
2. In establishing a net income margin I determined the weighted average net margin for profitable, presumably, competitive companies with less than \$5 million in revenue across a broad range of standard industrial classifications.

3. I examined a total of 562 profitable companies for which public information is available. Of that, 42 companies were eliminated from the survey because they exhibited extraordinary income items which grossly skewed the resultant margin.

4. Of the companies reviewed the average revenue was \$2,245,000.

5. Net income, for purposes of this study, was defined as income after depreciation, amortization, interest and taxes. It should be noted that companies in the survey sample account for each of these item differently. No attempt was made to equalize the account categories.

6. Based on the results of the survey, I have determined that the weighted average net income margin for these companies is 15.5%, and conclude that this margin could serve as the regulatory preemption margin for smaller cable television systems.

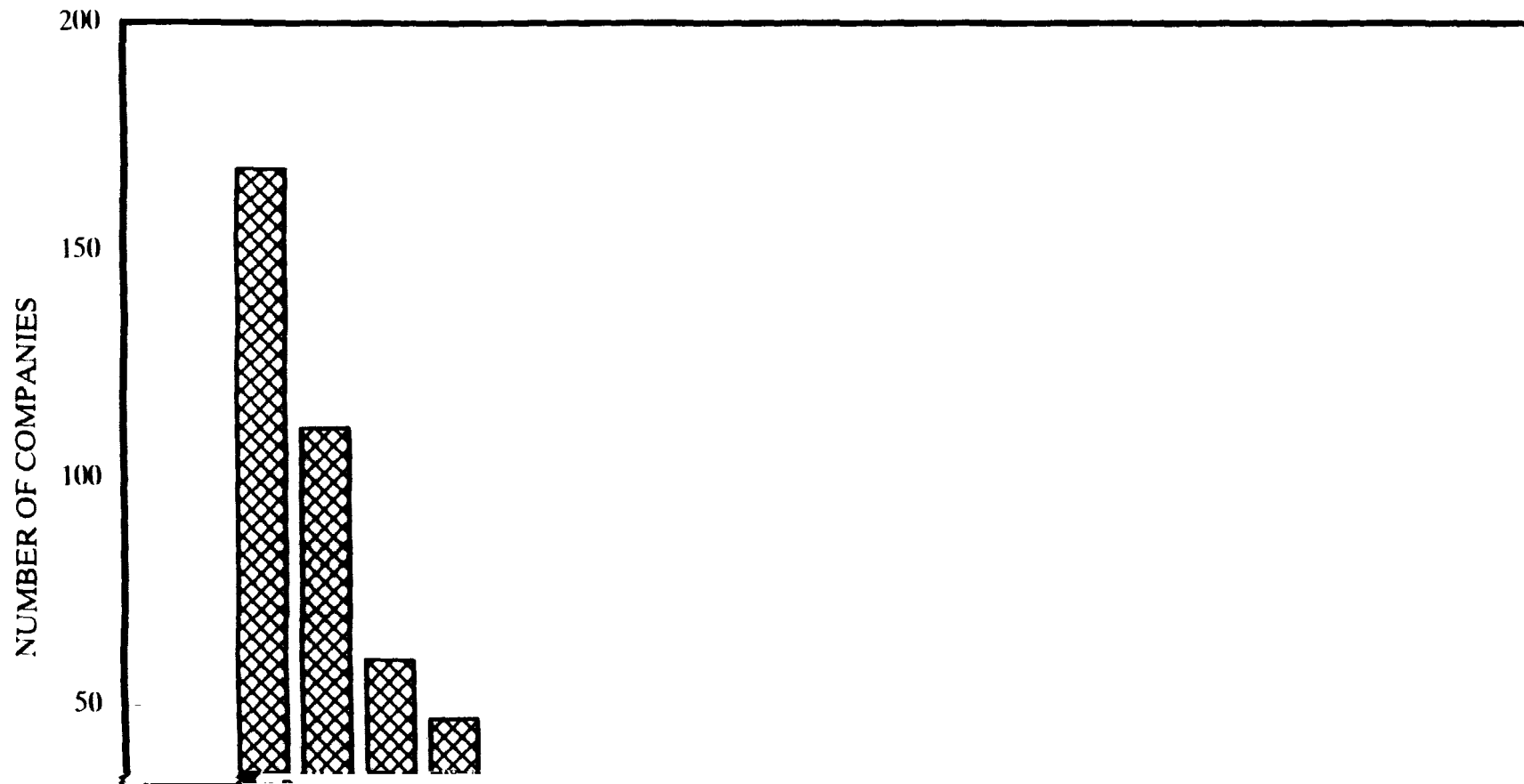
A handwritten signature in black ink, appearing to read "Anthony P. Kern", written over a horizontal line.

Anthony P. Kern

INCOME MARGIN DISTRIBUTION ANALYSIS		MIDPOINT	COMPANIES	WEIGHTING
0.0%	5	0.00%	5	0
5.0%	168	2.50%	168	4.2
10.0%	111	7.50%	111	8.325
15.0%	60	12.50%	60	7.5
20.0%	47	17.50%	47	8.225
25.0%	33	22.50%	33	7.425
30.0%	18	27.50%	18	4.95
35.0%	15	32.50%	15	4.875
40.0%	11	37.50%	11	4.125
45.0%	13	42.50%	13	5.525
50.0%	7	47.50%	7	3.325
55.0%	4	52.50%	4	2.1
60.0%	6	57.50%	6	3.45
65.0%	4	62.50%	4	2.5
70.0%	5	67.50%	5	3.375
75.0%	3	72.50%	3	2.175
80.0%	2	77.50%	2	1.55
85.0%	2	82.50%	2	1.65
90.0%	2	87.50%	2	1.75
95.0%	4	92.50%	4	3.7
100.0%	0	97.50%	0	0
GREATER THAN 100%	42	WEIGHTED AVERAGE:		15.5%

REVENUE DISTRIBUTION ANALYSIS (\$000)		MIDPOINT	COMPANIES	WEIGHTING
0	0	0	0	0
250	47	125	47	5,875
500	37	375	37	13,875
750	33	625	33	20,625
1,000	23	875	23	20,125
1,250	41	1,125	41	46,125
1,500	25	1,375	25	34,375
1,750	23	1,625	23	37,375
2,000	31	1,875	31	58,125
2,250	31	2,125	31	65,875
2,500	35	2,375	35	83,125
2,750	20	2,625	20	52,500
3,000	28	2,875	28	80,500
3,250	32	3,125	32	100,000
3,500	21	3,375	21	70,875
3,750	17	3,625	17	61,625
4,000	18	3,875	18	69,750
4,250	28	4,125	28	115,500
4,500	24	4,375	24	105,000
4,750	22	4,625	22	101,750
5,000	23	4,875	23	112,125
GREATER THAN \$5M	3	WEIGHTED AVERAGE:		2,245

PROFITABLE COMPANIES WITH REVENUE LESS THAN \$5MM  
DISTRIBUTION ANALYSIS



## **RESUME OF ANTHONY P. KERN**

**ARTHUR ANDERSEN & CO., SC**

Anthony P. Kern is a Senior Manager in Arthur Andersen's worldwide telecommunications practice. He has responsibility for a variety of projects including management consulting, business planning, acquisition review, due diligence, the valuation of tangible and intangible property for tax purposes, fair market valuations, management audits, feasibility studies, damage assessments and general litigation support. Additionally, he serves as a management and acquisition advisor to a public telecommunications growth and income fund.

Mr. Kern has extensive experience in management and systems evaluation of both franchise and private cable television systems, programmers, telecommunications networks, radio and television stations, cellular telephone systems, paging systems, microwave systems and special mobile properties. Additionally, he has developed numerous business plans for new media projects including programming ventures and new-technology companies. In his nineteen years in the media business, Mr. Kern has directed consulting applications for over \$35 billion in telecommunications properties, and is a recognized expert by the United States Federal Courts in matters of telecommunications management, transactions, and valuations.

Mr. Kern was previously with the communications consulting firm of Malarkey-Taylor Associates as Vice President and Managing Director. Prior to that he was with Frazier, Gross & Kadlec, Washington, D.C. as a Project Director. Additionally, Mr. Kern has held operations positions at NBC and ABC owned and operated radio stations. He has also held the positions of Director of Sales and Marketing of a broadcast/cable electronics manufacturer and Regional Director of a national business development organization.

### **EXPERIENCE**

**1991 - Present:** - Arthur Andersen & Co.

**1986-1991** - Malarkey-Taylor Associates, Inc., Washington, D.C.

**Vice President & Managing Director**

- Telecommunications consultants

Responsible for all financial and management projects for clients in Cable, Broadcasting, Cellular, Paging, Programming, Telecommunications and related industries.

**1985-1986** - Frazier, Gross & Kadlec, Inc., Washington, D.C.

**Project Director/Financial Analyst**

- Communications Consultants

Responsible for valuation of cable television systems, broadcast properties, print properties, profitability assessments, management audits and client litigation support.



1983-1985 - Mid Atlantic Business Investment Group, Washington, D.C.  
Regional Director